

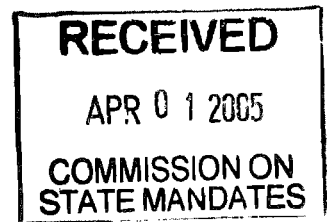
COMMENTS BY THE CITY OF NEWPORT BEACH

On Reconsideration of Prior Decision on
Brown Act Reform

Government Code Sections 54952, 54954.2, 54957.1, and 54957.7
As amended by Statutes 1993, Chapters 1136, 1137 and 1138, and
Statutes 1994, Chapter 32

Directed by Statutes 2004, Chapter 316, Section 3,
Subdivision (c) (Assem. Bill No. 2851),

Effective August 25, 2004



The City of Newport Beach hereby submits its comments pursuant to the Notice of Reconsideration, Briefing and Hearing Schedule posted by the Commission on State Mandates.

To the best of the knowledge of the information and belief of the City of Newport Beach, there have been no federal statutes nor federal cases which have affected the ultimate finding by the Commission on State Mandates that the within matter constitutes a reimbursable state mandated program under the California Constitution, Article XIII B, Section 6, as well as the California Government Code.

It is anticipated that the purpose for the within reconsideration is to determine whether the State has any continuing responsibility to fund the within program in light of *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727. In that matter, the court held that since the school districts and county were not legally obligated to participate in eight of the nine programs which were the subject of the test claim, the participation was voluntary and thus not reimbursable. As to the last program, the court held that as the program came accompanied by program funding, there was a source of funds for the "reasonable district administrative expenses" which included the Open Meetings Act, and thus there were no costs mandated by the state.

Unlike school districts, which had the option of participating in school site councils, the City's boards and commissions are not voluntary programs for which the City has the option to participate. Additionally, these boards and commissions are not grant funded, such as to eliminate the State's responsibility to defray the cost of compliance.

Even if there were grant funds available, the Commission's Parameters and Guidelines require that such grant funds are to be deducted from the cost of performing the mandate, as follows:

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain a mandate shall be deducted from the costs claimed. **In addition, reimbursement for this mandate from any other source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.** [Emphasis added.]¹

Thus, although to the best of the knowledge, information and belief of the City of Newport Beach, there is no alternative source of funding to defray the costs claimed under this mandate, were such to be made available, the Parameters and Guidelines require that such funding be utilized to offset the costs claimed.

With regard to the period of reimbursement on the Commission's decision on reconsideration, the legislation mandating reconsideration became effective on August 25, 2004. Accordingly, any decision by the Commission only affects costs incurred after July 1, 2004.²

I declare under penalty of perjury that the foregoing is true and correct except as to those matters stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 30 day of March, 2005 at Sacramento, California.



Glen Everroad, Revenue Manager
City of Newport Beach

¹ See Administrative Record, Adopted Parameters and Guidelines commencing page 1323, at page 1336.

² See Commission's finding on Draft Staff Analysis, Reconsideration of Handicapped and Disabled Students, page 4; see also Government Code, Section 17557(c).